

EXHIBIT D

From: Michael N. Impellizeri
Sent: Tuesday, August 20, 2024 3:35 PM
To: Gibbs, J. Evan
Cc: Gorman, Daniel E.; kmulry@FarrellFritz.com; Kent, Paris L.; Krystal B. Armstrong; Ken Novikoff; Michael Mule; Nicole Koster
Subject: RE: [EXTERNAL] Activity in Case 2:23-cv-02084-GRB-SIL Siteone Landscape Supply, LLC v. Giordano et al Motion to Compel

Evan:

I tried calling you after you sent the below email, but you did not pick up. I left you a voicemail –

We strenuously disagree with the characterizations contained in your below email. We sent you an update on Friday that responses would be forthcoming, and you filed a motion on Monday without any further communication.

Notwithstanding the forgoing, I emailed you (and then called you) to resolve your motion in good faith. Your motion requests supplemental responses by August 23rd and for document production to be substantially completed by September 13th – we agree to both.

Accordingly, please confirm that the motion will be withdrawn by 12:00 PM tomorrow, August 21, 2024. Thanks -



Michael N. Impellizeri

Associate

926 RXR Plaza, Uniondale, NY 11556-0926

D 516.357.3118 **T** 516.357.3000 **F** 516.357.3333

Michael.Impellizeri@rivkin.com

www.rivkinradler.com



From: Gibbs, J. Evan <Evan.Gibbs@troutman.com>
Sent: Tuesday, August 20, 2024 2:11 PM
To: Michael N. Impellizeri <Michael.Impellizeri@rivkin.com>
Cc: Gorman, Daniel E. <Daniel.Gorman@troutman.com>; kmulry@FarrellFritz.com; Kent, Paris L. <Paris.Kent@troutman.com>; Krystal B. Armstrong <Krystal.Armstrong@rivkin.com>; Ken Novikoff <Ken.Novikoff@rivkin.com>; Michael Mule <MichaelMule@mllaborlaw.com>; Nicole Koster <NKoster@mllaborlaw.com>
Subject: RE: [EXTERNAL] Activity in Case 2:23-cv-02084-GRB-SIL Siteone Landscape Supply, LLC v. Giordano et al Motion to Compel

Michael –

We will not be withdrawing our motion, and we have more than satisfied the Court's pre-motion conferral requirements. We've made extensive efforts over the past two months during calls, in letters, and in emails to spur the Vic Defendants into providing supplemental discovery responses and producing documents—all to no avail. Further conferences would only result in more unjustified delays.

There is no excuse (and none have been offered) for the Vic Defendants dragging their feet as they have. It is telling that even now, in the face of our motion, your email makes no mention of a document production when it has been more than two months since the Vic Defendants made their lone production of 17 documents. We will of course advise the Court if the Vic Defendants serve their supplemental discovery responses or produce documents before the Court issues a ruling on our motion.

By way of update, we have finished reviewing the initial 21,000 documents responsive to our search terms and the other approximately 4,000 documents that hit on the revised search terms we developed after our meetings with you all last month. We are finalizing the responsive documents from those sets for production and working on our privilege log. We are continuing to gather additional documents outside of that data, including our most sensitive ones identifying customers and financial information, which we plan to have in our next rolling production. We still anticipate being substantially finished with our document production by the end of the month.

Thank you.

J. Evan Gibbs

Partner

troutman pepper

Direct: 404.885.3093 | Mobile: 229.425.3745 | Internal: 11-3093

evan.gibbs@troutman.com

From: Michael N. Impellizeri <Michael.Impellizeri@rivkin.com>

Sent: Monday, August 19, 2024 5:02 PM

To: Gibbs, J. Evan <Evan.Gibbs@troutman.com>

Cc: Gorman, Daniel E. <Daniel.Gorman@troutman.com>; kmulry@FarrellFritz.com; Kent, Paris L. <Paris.Kent@troutman.com>; Krystal B. Armstrong <Krystal.Armstrong@rivkin.com>; Ken Novikoff <Ken.Novikoff@rivkin.com>; Michael Mule <MichaelMule@mllaborlaw.com>; Nicole Koster <NKoster@mllaborlaw.com>

Subject: FW: [EXTERNAL] Activity in Case 2:23-cv-02084-GRB-SIL Siteone Landscape Supply, LLC v. Giordano et al Motion to Compel

CAUTION: This message came from outside the firm. DO NOT click links or open attachments unless you recognize this sender (look at the actual email address) and confirm the content is safe.

Evan:

We are receipt of SiteOne's below motion to compel which requests, among other things, that the Vic Defendants provide supplemental discovery responses by August 23rd.

This motion should be withdrawn – as it is both procedurally and substantively without merit. Initially, since our email on Friday, your office failed to contact us, or meet with us, to discuss prior to filing (certainly not by phone or in-person – as required by the Court's Part Rules). Substantively, we never intimated that we would not be providing supplemental discovery responses. To the contrary, on Friday, we provided you with an update that supplemental responses would be forthcoming. Had you picked up the phone, and asked if they would be received by August 23rd, the answer would have

been “yes.” Then, you would not have had to waste the parties’ time and, more importantly, the Court’s time, with needless motion practice.

Given that our response to your motion is due Friday, August 23, 2024, please confirm by 5:00 PM, tomorrow, August 20, 2024, that your motion will be withdrawn.



Michael N. Impellizeri

Associate

926 RXR Plaza, Uniondale, NY 11556-0926

D 516.357.3118 T 516.357.3000 F 516.357.3333

Michael.Impellizeri@rivkin.com

www.rivkinradler.com



From: ecf_bounces@nyed.uscourts.gov <ecf_bounces@nyed.uscourts.gov>

Sent: Monday, August 19, 2024 9:59 AM

To: nobody@nyed.uscourts.gov

Subject: [EXTERNAL] Activity in Case 2:23-cv-02084-GRB-SIL Siteone Landscape Supply, LLC v. Giordano et al Motion to Compel

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered by Gibbs, John on 8/19/2024 at 9:58 AM EDT and filed on 8/19/2024

Case Name: Siteone Landscape Supply, LLC v. Giordano et al

Case Number: [2:23-cv-02084-GRB-SIL](#)

Filer: Siteone Landscape Supply, LLC

Document Number: [141](#)

Docket Text:

[Letter MOTION to Compel and for Sanctions Against Defendants Victor Caroleo; Nicholas Giordano; Narrow Way Realty Ltd.; Narrow Way 2 LLC; Scapes Supply LLC; Neway Management; and Group 5 Associates Ltd. by Siteone Landscape Supply, LLC. \(Attachments:](#)

(1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3, # (4) Exhibit 4, # (5) Exhibit 5, # (6) Exhibit 6, # (7) Exhibit 7, # (8) Exhibit 8) (Gibbs, John)

2:23-cv-02084-GRB-SIL Notice has been electronically mailed to:

Colleen O'Neil colleen@mlaborlaw.com

Daniel E. Gorman daniel.gorman@troutman.com

Emanuel Kataev emanuel@sagelegal.nyc, 4119461420@filings.docketbird.com, ekesq2014@recap.email

John Sikes Gibbs , III evan.gibbs@troutmansanders.com, rachael.best@troutman.com

Julie Elizabeth Cohen julie.cohen@skadden.com, julie-cohen-0764@ecf.pacerpro.com

Kenneth Adam Novikoff ken.novikoff@rivkin.com

Kevin Patrick Mulry kmulry@farrellfritz.com, courtnotifications@farrellfritz.com

Matthew Adler matt.adler@troutman.com

Michael Charles Mule michaelmule@mlaborlaw.com

Michael Neal Impellizeri michael.impellizeri@rivkin.com, impellizerim@gmail.com

Nicole Marie Koster nkoster@mlaborlaw.com

Richard Johannesen r.johannesen@johannesenlaw.com

Saul D. Zabell SZabell@laborlawsny.com, SZabell@ecf.courtdrive.com

2:23-cv-02084-GRB-SIL Notice will not be electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP NYEDStamp_ID=875559751 [Date=8/19/2024] [FileNumber=19229066-0]
[cfc15defe0a25aebffbe8273154f4cc10faca0709b76d9e015b980f63bfed5815
fb2dea4aef39c22eb610025f61ae90e952ddecdaaf83bcf0a0707b93d05]]

Document description:Exhibit 1

Original filename:n/a

Electronic document Stamp:

[STAMP NYEDStamp_ID=875559751 [Date=8/19/2024] [FileNumber=19229066-1]
[f1847a4eab5e8c9fad56425bf5f2c7e8822653536b67d56aa7674ede56e92b2982a5
3dbdcac85304e7f3a230a97d5407e3c3a8621c5a93a2f5620a674bcde7f1]]

Document description:Exhibit 2

Original filename:n/a

Electronic document Stamp:

[STAMP NYEDStamp_ID=875559751 [Date=8/19/2024] [FileNumber=19229066-2]
[b0b3fccb856b26eb32b6cd7c07f6f3734f3086af8eac4f1d278fb6294c05f4f3a5c9
3c61a908d0a3a31c54493d84553f93b4288161d26c09bea5284f8939f3ce]]

Document description:Exhibit 3

Original filename:n/a

Electronic document Stamp:

[STAMP NYEDStamp_ID=875559751 [Date=8/19/2024] [FileNumber=19229066-3]
[4708182b08ec76b16e6e4bbd0ae8f53b9146b99573ea010063783107663f4c8cfbc9
050878640aecc54e647efae41b56157ae2cb89f7b198d1415a085c210b52]]

Document description:Exhibit 4

Original filename:n/a

Electronic document Stamp:

[STAMP NYEDStamp_ID=875559751 [Date=8/19/2024] [FileNumber=19229066-4]
[6af5c96af27cd1f73d11c12fbc0c7e3fe52d0e3067cedd6b12cc3cf51fae09793d87
77647c379a8650d8713d28c4a78970fcb9c7036f6653f0bca4edcfbc76ac]]

Document description:Exhibit 5

Original filename:n/a

Electronic document Stamp:

[STAMP NYEDStamp_ID=875559751 [Date=8/19/2024] [FileNumber=19229066-5]
[5869f368abdfb5fa6a2c644042d8eb46864774304f391e238a7353b2a8ecf4184964
a9a59d0e25c8faec1e478994f443efde6b3b8772d5a4b3b80e1c11ceb6a6]]

Document description:Exhibit 6

Original filename:n/a

Electronic document Stamp:

[STAMP NYEDStamp_ID=875559751 [Date=8/19/2024] [FileNumber=19229066-6]
[4810d01daa246699951909fa5ef7b0ce5f56efe54d1ff799ad406007f4d577fd8009
b96d52ff37dba2b418813086677f50b32563cee03dc840566c999abf9a28]]

Document description:Exhibit 7

Original filename:n/a

Electronic document Stamp:

[STAMP NYEDStamp_ID=875559751 [Date=8/19/2024] [FileNumber=19229066-7]
[a5785b1244abcc1ac3fa342b634f23d6e05de342335e83e0fd430f4d238f5f31aec6
87b85bdbfa682b3bb89a7391d270bfefd27cc4d5466e9ed1334cbc81200d]]

Document description:Exhibit 8

Original filename:n/a

Electronic document Stamp:

[STAMP NYEDStamp_ID=875559751 [Date=8/19/2024] [FileNumber=19229066-8]
[01db1a9348bbd263aef7ed0fc594c92212dde05eae96d5256c07c4784c9a3d73f2e8
d34335b2ec479ebd0cfba00c3f1c31e07e730fda253cad17a80e21f5d338]]

NOTICE: This message may contain information that is confidential or privileged. If you are not the intended recipient, please advise the sender immediately and delete this message. See: <http://www.rivkinradler.com/disclaimer-electronic-communications/> for further information on confidentiality.

This e-mail (and any attachments) from a law firm may contain legally privileged and confidential information solely for the intended recipient. If you received this message in error, please notify the sender and delete it. Any unauthorized reading, distribution, copying, or other use of this e-mail (and attachments) is strictly prohibited. We have taken precautions to minimize the risk of transmitting computer viruses, but you should scan attachments for viruses and other malicious threats; we are not liable for any loss or damage caused by viruses.